Hon Goodwin

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REPLY

TO A PAMPHLET, ENTITLED

"WHEELING BRIDGE SUIT:

A NOTICE OF ITS HISTORY AND OBJECTS, ADDRESSED TO THE LEGISLATURE OF PENNSYLVANIA."

CONTAINING

FACTS REPORTED BY CHANCELLOR WALWORTH TO THE SUPREME COURT.

REASONS WHY THE SUIT NOW PENDING SHOULD NOT BE DISCONTINUED.

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WHEELING BRIDGE CASE.

Eight facts found by Chancellor Walworth, and reported by him to the Supreme Court of the United States.

I.

The Wheeling bridge is not 92 *feet above the river practically, but is only* 79½ *feet high.*

"At the highest part of the bridge, for the distance of about 56 feet in width, there is a clear headway, for the passage of steamboats with their chimneys standing, of 92 feet above zero of the Wheeling water guage; or 91 feet above extreme low water. This headway commences about 174 feet from the top of the face of the eastern abutment, and terminates 750 feet from the same point in the western abutment. *But this space of* 56 *feet in width is not over any part of the river at extreme low water.*

"The bank of the river under the eastern extremity of the 56 feet space, is 10.21 feet higher than the level of zero of the Wheeling water guage; and under the western extremity, the height of the bank above zero of the guage is 3.81 feet. And it is only 22 inches below zero of the guage at a point 100 feet further west. The water upon the Wheeling bar must therefore be about 4 feet deep, to bring the easterly edge of the stream to a point under the western extremity of the 56 feet. *And it must be moré than* 15 *feet deep upon the bar to enable a steamboat drawing* 5 *feet to avail itself of the* 91 *feet of clear* headway above low water mark, for the whole width of 56 feet.

"*It follows from this statement of the facts, that a steamboat drawing five feet, and whose chimneys are* 79½ *feet high, or over, can never pass under the apex of the bridge, at any stage of the water, without lowering her chimneys.* And boats drawing 4 feet and having chimneys as high as 86 feet can never pass under any part of the bridge, without lowering, even in stages of water between 4 and 12 feet high on the Wheeling bar. This is in accordance with the testimony; which shows that the Cincinnati, whose chimneys, according to the measurement of the engineer, were but 84.7 feet high, had to lower them to pass under the bridge even in the lowest stages of the water upon which she ran."—*Walworth's Report, p.* 28.

II.

The Wheeling bridge is an obstruction to boats built before the erection of the bridge, and before the granting of the charter for the same.

"The boats running in that line and passing the site of the present suspension bridge, in 1849, previous to the time when the first cables were thrown across the eastern branch of the Ohio at Wheeling, were the Clipper, No. 2, the Brilliant, the Messenger, No. 2, the Isaac Newton, the New England, No. 2, and the Monongahela.

"The Clipper, No. 2 came out in March, 1846, was 215 feet long, and had chimneys 64 feet high. The Hibernia, No. 2 came out in 1847. She was 225 feet long, and her chimneys were 72½ feet high from the water. The Brilliant came out in February, 1848; was 227 feet long, and had chimneys 71 feet high. The Messenger No. 2 came out in the winter or spring of 1849; was 242 feet long, and had 76⅓ feet chimneys. The Isaac Newton was 182 feet long, and had chimneys only 63⅓

feet high. The New England, No. 2, was 222 feet long, and her chimneys were 65 feet high. The dimensions and height of the chimneys of the Monongahela I have not been able to ascertain from the evidence.

"There were also two other regular packets running past Wheeling in the spring and summer of 1849, previous to the erection of the bridge; the two Telegraphs, running as regular packets between Pittsburg and Louisville. The chimneys of the Telegraph, No. 1, were 80 feet high, and those of the other Telegraph were 79 feet 9 inches high.

"Not more than two or three of these nine packets had their chimneys prepared for lowering at the close of the navigation in the summer of 1849. And of the five largest, only one of them could have gotten under the bridge, on a twenty feet stage of water, with the chimneys standing; and that one, the Brilliant, could not have gotten under when the water was more than twenty-one feet upon the Wheeling bar. And neither of the two Telegraphs could have gotten under the bridge at a 13 feet stage of the water, with their chimneys standing.

"If the bridge had been erected in 1847, therefore, and these nine packets had then been running, two of them could not have gotten under the bridge for nearly three months, when the water was 13 feet and over. Two of them would have been unable to get under for 33 days, when the water on the bar was 20 feet and over; another, the Brilliant, from 19 to 25 days, when the water was over 21 feet; and the other four as much as 10 days, when the water was 29 feet and over, unless they had lowered or cut off their chimneys.

"Previous to the opening of the navigation upon the Ohio, for boats of this class, in the fall of 1849, the two Telegraphs had their chimneys prepared for lowering at the hurricane deck. The Telegraph No. 1 commenced running on the 9th of November, 1849, and continued to run, in the Louisville and Pittsburg trade, until the 15th of December, making 4 trips in all, and eight passages under the bridge. And the Telegraph No. 2 commenced running on the 3d of November in that year, and continued to run to the 29th of December, making 6 trips to Pittsburg and back, and 12 passages under the bridge. As the water was 12 feet and over, nearly one-third of that time, these two boats must have had to lower their chimneys on six or eight passages, during the short periods they ran in this trade, after the bridge was built."—*Walworth's Report, p.* 32.

III.

Much damage, delay and danger has resulted from such obstruction.

"The passage of three of the Pittsburg and Cincinnati packets which were running on the Ohio before the erection of the bridge had been actually stopped, or obstructed by such bridge, previous to the entry of the order of reference in this cause; the Messenger, No 2, the Hibernia, No. 2, and the Brilliant.

"The first of these boats arrived at the bridge on the 10th of November, 1849, on her downward passage, upon a 20 feet stage of water; and had to cut off her chimneys before she could pass the bridge. She was detained there about 7 hours; but I believe she did not lose her trip or her passengers. She was subsequently detained at the bridge 7 hours, and was obliged to cut off her chimneys a second time.

"On the 11th of November, 1849, the Hibernia, No. 2, reached the bridge, on her upward trip. They attempted to get her under the bridge by sinking her deeper in the water with coal ballast. But in attempting to pass the bridge the top of one of her chimneys caught upon a projection from the under side of the flooring timbers, and injured the chimney so that it had to be taken down and repaired. The boat was detained 32 hours at Wheeling, on that occasion; and was obliged to hire another boat to take her passengers on to Pittsburg, except such of them as preferred to cross the mountains by the way of Cumberland.

"On the 18th of the same month, the passage of the Hibernia, No. 2, was again obstructed by the bridge, on her downward passage; by which she lost an entire trip. Finding she could not get under the bridge in time to save her trip, she

transferred her freight and passengers to another boat, and returned to Pittsburg. And the passage of the same boat was again obstructed by the bridge in coming up the river last spring. On that occasion she arrived at Wheeling between 9 and 10 o'clock in the morning. And finding she could not get under the bridge she gave up the trip; and landed her passengers, who proceeded east by the way of Cumberland. That night, or some time the next day, she was enabled to pass under the bridge, and proceeded to Pittsburg in time to take her place in the line on her usual day of starting.

"The Brilliant was obstructed by the bridge on her passage up on the 18th of December, 1849; and had to wait until her chimneys could be cut off, to enable her to pass under the bridge. The chimneys were cut off at great risk to the lives of those who were engaged in the operation; and the boat passed under the bridge, and proceeded to Pittsburg, after a detention of four or five hours.

"In the winter and spring subsequent to the erection of the bridge, the Buckeye State, the Keystone State, and the Cincinnati, three new packets were brought into the Pittsburg and Cincinnati line, in the places of the New England, No. 2, the Isaac Newton, and the Monongahela. They were all of much larger dimensions, and had much taller chimneys than the old boats for which they were substituted; and their chimneys were hinged and rigged for lowering.

All of these new boats, as well as the four other boats which still remained in that line, were at the time of the entry of the order of reference in this cause, engaged in the navigation and commerce of the Ohio, from Pittsburg to places below the bridge. And they are still engaged in navigating the river whenever the water is high enough to enable them to run.

"Of the new packets, when they came out, the Buckeye State was 264 feet long from stem to stern, and her chimneys were 74.8 feet high; the Keystone State was 250 feet long, and had 77.5 feet chimneys; and the Cincinnati was 242 feet long, and her chimneys were 84.7 feet in height.

Two accidents have occurred to some of these new boats, in passing under the bridge, since they came out. The Keystone State on her downward passage, the 4th of March last, in attempting to pass under the bridge upon a 13½ feet stage of water, could not get near enough to the Wheeling shore to pass under the apex of the bridge. And in attempting to drop down about twenty feet farther west, one of the chimneys struck the bridge, and tore away all the guys or fastenings of both chimneys except one guy rod, broke the westerly chimney in two, broke off the hinge from the other chimney, and tore up some portions of the hurricane deck, to which the guy rods were fastened. And if the remaining guy rod had given way, both chimneys, weighing together about 4 tons, would have fallen down.

"On the 20th of October last, the Cincinnati, upon her up trip, in attempting to pass the bridge with four or five feet of water on the Wheeling bar, partially lowered her chimneys. But still she struck one of the timbers of the bridge which sustain the flooring, and broke off a piece of such timber some two feet long, which fell on the hurricane deck near the pilot house. The hinge of the larboard chimney was broken; and all the guys which sustained the chimney in its place, except one, were also broken. Two of the iron cross pieces between the chimneys were likewise broken; and a piece of one of them, weighing from 15 to 20 pounds, fell, and broke through the hurricane deck and the cabin deck, and lodged on the guard of the main deck below. The rings at the top of the chimneys to which the guy rods are attached were also broken, and the top of one of the chimneys was mashed in; so that it was necessary, afterwards, to take down the chimneys to repair them."—*Walworth's Report, page* 33.

IV.

The height of chimney used on these boats is necessary, and is no greater, and not even as great, as is used at some other places.

"It is insisted, however, on the part of the defendants, that such high chimneys are not necessary for the purposes of draft, and are in fact useless. Even if this

were so, it will be seen by the preceding table of the water at Wheeling for twevle years, that in the year 1847, boats with chimneys only a fraction over sixty-five feet high from the water, would have been prevented from passing under the bridge, unless they lowered them for fifteen days in the year; averaging a little more than two entire trips for each of the weekly Pittsburg packets. And in each of the years 1840 and 1841, they would have been prevented from passing for nine days; while the water, upon the Wheeling bar, was twenty-seven feet or more.

"In relation to the question whether chimneys as high as those now in use upon the Pittsburg and Cincinnati packets, and some of the larger boats on the Ohio, are necessary for obtaining the maximum of speed desirable in the navigation of the river, there is a diversity of opinion among the witnesses; especially among those who are not acquainted with the scientific principles of chimney draft in reference to the combustion of fuel for the generation of steam. But I think there is a great preponderance of the testimony, even of that class of witnesses, in favor of the necessity of very high chimneys upon the large Ohio steamboats.

"Rejecting the deductions of science on the subject, the teachings of experience show, that as boats upon the Ohio have been gradually improved in their dimensions from time to time, and the heights of their chimneys increased, they have been enabled to run with greater speed, to the evident advantage of commerce, and of travel upon the river. And the fact that several different projects for procuring artificial draft, as an available substitute for the draft of tall chimneys, have been tried upon the western waters, and have failed and been abandoned, is very strong evidence in favor of the necessity of natural draft for the combustion of wood and bituminous coal upon the steamboats navigating the Ohio."—*Walworth's report, p. 37.*

NOTE.—The following are the dimensions of the Pittsburg packets, as compared with others. To make a fair comparison, the actual height of chimney (from top of furnace to top of chimney) is given for each boat.

Height of the seven Pittsburg Packet chimneys:

Clipper, No. 2,	57 feet—(U. S. Engineer's report, p. 702.)
Brilliant,	62 "
Keystone State,	64 "
Buckeye State,	64 " 8 inches.
Messenger,	64 " 3 "
Cincinnati.	66 " 9 "
Hibernia, No. 2,	55 " 6 "

Hudson River Boats,

Illinois.	55–60 feet—Dimensions furnished by			Howell,	the builder.
New World,	56 "	"	"	Secor,	"
Vanderbilt,	53 "	"	"	"	"
Isaac Newton,	53 "	"	"	Copeland, defendants' witness.	
Two or three tow-boats,	60 " each	"	"		

Ocean Steamers.

Collins' line Baltic,	70 feet—Dimensions furnished by			Copeland, defendants' witness.	
Collins' line Pacific,	70 "	"	"		
Ohio,	62 "	"	"	Secor,	the builder.
Georgia,	62 "	"	"	Howell,	"
North America,	57 "	"	"	"	"

Lower Ohio and Mississippi Steamers.

Magnolia,	78 feet—U. S. Engineer's report, p. 702.			
Alexander Scott,	76 "	"	"	"
Postona,	77 "	"	"	"
Ben Franklin,	70 "	"	"	"
Telegraph, No. 2,	70 "	"	"	"
Peytona,	63 "	"	"	"
Hoosier State,	56½ "	"	"	"

V.

The lowering of these chimneys by hinges is tedious, dangerous, and expensive.

"A great number of witnesses have been examined on both sides in reference to the question whether the process of lowering such chimneys as are carried upon the Pittsburg and Cincinnati packets, and others of the largest class of boats which navigate the waters of the Ohio, is not attended with injury to the chimneys, delay to the boats, and danger to the limbs and lives of the passengers, or of the officers and crew.

"So far as the question depends upon opinion merely, there is a very great conflict in the testimony of the witnesses. But when we examine the facts testified to by them, I think there is a decided preponderance of testimony in favor of the affirmative of the question.

"Even with the smaller and shorter chimneys on the boats which pass through the Louisville and Portland canal, where the boats proceed very slowly and lower and raise their chimneys at leisure, accidents frequently occur to the chimneys; though, from the nature of the navigation through the canal, the process of raising and lowering does not produce much delay there, in ordinary cases. It is easy to perceive, that if the four, five, or six rings, let down upon boats that pass the canal, should fall and break from their hinges, as they sometimes do, the lives of the passengers and crew, or of some of them, would necessarily be endangered.

"The very elevated as well as large chimneys used upon the Pittsburg and Cincinnati packets, and other boats of that class, can not, certainly, with any facility or safety, be lowered by hinges at the tops. They are therefore obliged to lower them at the hurricane deck, by the means of a derrick. The weight of the parts of the two chimneys which must be let down, upon these large boats, is estimated by the witnesses to be from three to four tons. This enormous weight hanging over the cabin, or rather over the berths of the passengers, in the process of lowering, would probably prove disastrous in the extreme, if, by any accident, the chimneys should come down by the run; which is very likely to occur from the carelessness or stupidity of the green hands that the owners and officers of western boats are so often obliged to employ.

"The testimony also shows that, in addition to the cost of preparing the chimneys for lowering, including the greater thickness of iron required for chimneys which are to be lowered, such chimneys will not last more than half as long, or two-thirds at the extent, as chimneys which are permitted to stand during the life of the boat. That life is very short on the western waters; being not more than five years upon an average, or about as long as a standing chimney will last.

"The danger of lowering chimneys to pass the Wheeling bridge, in passing down the river, is very much increased by the velocity of the current between the head of the island and the bridge, when the water at Wheeling is very high; unless the boat is subjected to the delay of slackening her fires, stopping her engine, landing her above the bridge, and dropping her down, stern foremost, by a warp."—*Walworth's Report*, p. 35.

VI.

The bridge will be a great injury to commerce if it remains, and it ought to be raised.

"The public is entitled to the benefit of the improvements which are made from time to time in navigation, as well as to improvements in the arts. And to enable steamboats on our western waters, successfully to compete with railroads, which are constantly being constructed in the interior of the States bounding on those waters, they must in some way be able to obtain a still greater speed than any of those boats now have.

"It would be a great injury to commerce, and to the community, to have the benefit of a fair competition, between river navigation and railroad transit, destroyed

by any unnecessary obstruction of either. And if railroads can be carried across our large western rivers, without impairing the navigation, it is proper that it should be done. Certainly if this beautiful and beneficial structure which has been thrown across the eastern branch of the Ohio at Wheeling, at so much cost, can remain as it is, without injury to the commerce and navigation of the river, no one should desire its removal or alteration.

"But upon a full examination of the subject, or rather such an examination as I have been enabled to give it, in a limited time, and without the aid of counsel, I have arrived at the conclusion, and do accordingly decide and report, that the Wheeling suspension bridge, referred to in the pleadings and proofs in this cause, is an obstruction of the free navigation of the Ohio, at the place where it is erected across the same, by vessels propelled by steam, which are now engaged in the commerce and navigation of that river, and by such vessels as will undoubtedly be engaged in such navigation and commerce hereafter, at that place; while such bridge is permitted to remain without very material alterations."—*Walworth's Report, p.* 45.

"In view of all these circumstances, and from the evidence in this case, if it should eventually be decided that the bridge at Wheeling is an obstruction to the navigation of the river, so as to require to be altered, I think such alteration should not be made by substituting a truss bridge in its place, with piers in the channel of the river, so as to allow of a draw therein. But the alteration should be made by elevating the present bridge higher, and giving a greater width of headway at the apex, or highest point of the bridge; and by making it more nearly over the channel of the river. In other words, the present bridge should be replaced by another suspension bridge of greater height, and better adapted to the passage of boats; but substantially of the same character."—*Walworth's Report, p.* 17.

VII.

That the present bridge cannot be used for railroad purposes.

"I think, however, it is very doubtful whether suspension bridges can ever be made applicable to the transit of railroad trains across the Ohio river, proceeding at their usual speed. For it has been very truly said that 'from the nature of the railway system, the structures employed therein are necessarily exposed to concussions, vibrations, torsions, and momentary pressures of enormous magnitude, produced by the rapid and repeated passage of heavy trains'"—*Walworth's Report, p.* 17.

"Indeed the testimony of Mr. Stephenson, before the commissioners before referred to, shows that the effect of rapid transit over a suspension bridge is similar to the action of the wind in producing great and sudden changes in the form of the catenary and of the flooring of the bridge. He says: 'I do not think that a railway bridge could be made upon suspension principles. We have one at Stockton, which I replaced by one of the iron girder bridges, and it was fearful when the engine went over it. I have been informed that the wave on the bridge was two feet high.' The length of that bridge was only 300 feet."—*Walworth's Report, p.* 20.

"Since the remarks on the fourteenth page, in the preceding report, were printed, I have received Dempsey's Rudimentary Treatise on Tubular and other iron girder bridges, which contains an extract from the report of Mr. Stephenson, giving a particular account of the changes which had to be made in the railway bridge over the Tees, at Stockton. From this it appears that immediately upon the opening of the suspension bridge for railway traffic, the undulations into which the roadway was thrown, by the inevitable unequal distribution of the weight of the train upon it, were such as to threaten the instant downfall of the whole structure. These dangerous undulations were most materially aggravated by the chain itself; as the platform or roadway, constructed with ordinary trussing, for the purpose of rendering it comparatively rigid, was suspended by the chain. And the structure being thus composed of two parts, the flexible chain and the rigid flooring, which were incompatible with each other, the moment an unequal distribution of weights upon the roadway took place, by the passage of a train, the curve of the chain altered, one portion of it

at the point, immediately above the greatest weight, descending and causing some other portion of the chain to ascend in a corresponding degree, which necessarily raised the platform with it and augmented the undulation. This defect was found to operate so seriously, that immediate steps were taken to support the platform underneath by ordinary trussing, to take off a large portion of the strain upon the chains. But this also proved an entire failure; and Mr. Stephenson was called upon by the railroad company to erect a new bridge in lieu of the suspension bridge, which, in his testimony before the commissioners, he says he did."—*Walworth's Report, p.* 54.

VIII.

That the bridge company can afford to raise it.

"Still it would be for the interest of the stockholders of the company to make the necessary alterations, rather than sacrifice the amount expended in the construction of the present bridge; even if they could not realize an income of more than five per cent. upon the gross amount of their expenditures, including what has already been laid out. It may also be remarked, that a committee of the House of Representatives thought the accommodation to the public, and the amount of travel, would justify an expenditure of four hundred and ten thousand dollars, by the United States, to erect a suspension bridge over the Ohio at that place.

"I therefore conclude that it is practicable to alter the construction of the present bridge, so that it will not be an obstruction to the free navigation of the Ohio, consistent with the continuance of the bridge across the river at the place where it is now erected."—*Walworth's Report, p.* 52.

Reasons why the present suit against the Wheeling bridge should not be discontinued.

I.

From the history of the case.

The suit now pending is not predicated upon any abstract right to free navigation—neither is it founded, as some suppose, upon the declaration contained in the ordinance of 1787, that the waters leading into the Mississippi shall be common highways; which ordinance has lately been decided to be not now in force. The action proceeds on the ground of a special injury to the public works *owned* by the State of Pennsylvania, to which the Ohio river is a highway and out-let, and upon an express compact of 18th December, 1789, by the State of Virginia, that the use and navigation of the Ohio river through her territory should be free. Mr. Stuart seems to be under the mistaken impression that the controversy relates only to private and local interests at Pittsburg, which being appeased, would settle the question. It is true that important private interests at Pittsburg are injuriously affected, and these, to some extent, have shared in this contest; but other public interests of great magnitude are involved. Had the case stood merely upon Pittsburg rights and interests, jurisdiction would not have been entertained by the Supreme Court. But injury to public improvements *owned* by the State, constructed after the stipulation of 1789, and completed long before the erection of the bridge forming the gravamen of complaint, the defendants in their answer, "admitted that the navigation of the Ohio was important to those works, and that *their value would be injuriously affected,* if, from any cause, the passage of steamboats from Pittsburg were obstructed or impaired."

The jurisdiction of the Supreme Court being sustained upon this admission, a reference to ascertain the fact of obstruction was made to an eminent jurist of New York, Chancellor Walworth—who, after full proof, has decided and reported to the Court

that the Wheeling bridge is an obstruction to navigation of the Ohio river by steamboats. (Walworth's report, page 45). This fact being thus adjudged by the commissioner of the Supreme Court, and the injurious consequences to the public works of Pennsylvania (wholly aside from any local injury to Pittsburg or its citizens), standing admitted by the defendants upon the record, it would seem that the only admissable arrangement would be a redress of that injury, by elevating the bridge twenty-eight feet in manner recommended by Chancellor Walworth. His recommendation was made avowedly as a compromise, by an impartial and competent referee. It is less than the complainant is entitled to upon the proof, and falls short of what seems in the most impressive manner, to be demanded by the State of Pennsylvania.

II.

From the position which Pennsylvania has taken in the matter.

Prior to 1844 numerous applications to Congress for a bridge at Wheeling were successfully resisted by the Pennsylvania delegation, on the ground of her interests in ship building, and in the trade of the western and southern States, which such bridge might injure by obstructing navigation in high water. In 1844, by special resolution, the Pennsylvania senators were instructed, and her representatives requested "*to oppose every proposition* for the erection of a bridge at Wheeling or any other point on the Ohio river." (*Resolutions*, 26th January, 1844). And in February, 1850, pending the present suit, and after the defendants had publicly threatened the retaliation now intimated by their counsel, it was unanimously resolved by both branches of the Legislature, that the present suit "*be prosecuted to final judgment, decree, and execution*, for abatement of said nuisance." (*Joint resolutions, February*, 1850).

III.

From the conduct of the bridge company and the State of Virginia.

It may be proper, moreover, to allude to certain other facts which may have an important bearing upon the question, whether any arrangement short of judicial decision should be made. This suit having been commenced by the Attorney General before the erection of the bridge, and as soon as its elevation was known a full hearing was had before one of the Judges of the Supreme Court, who decided the bridge to be an unlawful obstruction of navigation, injurious to the State of Pennsylvania, and in violation of an express condition of the charter granted by the Legislature of Virginia. After this decision, and after frequent notorious interruptions of navigation at the bridge, by which steamboats that had been engaged in navigation before the charter was granted, were compelled to stop on their voyages to and from the ports of Pennsylvania, and to discharge at Wheeling their freight and passengers, the Legislature of Virginia assuming exclusive sovreignty and dominion over the Ohio river, passed an act expressly to legalize the structure that had been erected in direct disregard of the chartered condition prohibiting any obstruction to navigation. Planting themselves on this assumed sovreignty of Virginia, the defendants, in their second supplemental answer, set forth the above act, averring "that the Legislature of Virginia had full and complete power to pass said law, and that it was *binding on the State of Pennsylvania*;" and on this ground alone in that answer their defence rests. At their last session the same authority and jurisdiction was, by joint resolution, claimed by the Legislature of Virginia, with a resolve to defend it. (*Virginia, Doc. No.* 45).

Now, when it is considered that the Ohio river is the natural and only out-let to the Gulf of Mexico for Pennsylvania lumber, coal, and other products, mineral and manufactured, and that it is the great highway by which the products of western and southern States reach her ports, the significance of such an assumption of exclusive sovreignty and dominion by any bordering State, and especially by one that, by express compact, having renounced such sovreignty, resolves now to maintain it—cannot be too highly appreciated.

In view of these eireumstanees, it may, perhaps, be thought that the value of Pennsylvania eommeree on the Ohio river, and the obligation to enforee, for the benefit of her eitizens, a State eompaet, independent of any question immediately relating to the Wheeling bridge and Pittsburg interests, require that this legislative assumption by Virginia should be brought at onee to a judieial test before the eonstitutional tribunal; and that no eonsideration eould sanetion an arrangement that would leave sueh adverse assumption upon reeord in the Supreme Court. Following the example of Virginia, the States of Ohio and Kentueky authorized, last winter, the erection of bridges over the Ohio river—one at Louisville, the other at Steubenville, twenty miles above Wheeling. Both States had previously ehartered a bridge at Cineinnati, and others are projeeted. If this assumed right is now suffered to remain undeeided, it will soon be too late to question it. Abandonment of the present suit would, therefore, be equivalent to abandoning Pennsylvania eommeree on the Ohio river to the uneheeked legislation and rival interests of bordering States.

Finally, it is to be remarked, that although the Wheeling bridge stands adjudged to be an obstruetion to navigation, and eonfessed of reeord to be injurious to Pennsylvania, yet no proposition is made to remove the evil, or remedy the injury; but only a proposition for Pennsylvania to abandon her suit for redress, under pain of retaliation on the bridges and aqueduets ereeted over the Allegheny and Monongahela rivers.

Reply to the threatened danger to the State Aqueduct and the Allegheny and Monongahela bridges.

1st. When these improvements were made, Virginia had not, nor has she now, any State improvements on those rivers to be prejudieed by bridges and aqueduets, and hence no proeeedings ean be sustained against them by that State. Individuals must seek, for themselves, redress for any injury to navigation. Against the State of Pennsylvania, *citizens* of other States ean bring no suit; her aqueduets are, therefore, safe against all hazards. The bridge eompanies are private eorporations, that have means to defend themselves, and with them the State has nothing to do. So far as the general interests of the State are eoneerned, is it eertain their removal would not be a publie benefit, and may not the day eome, when she, herself, guarding her own interests above Pittsburg, will require the bridges to be removed, or suitable provisions to be made for the inereased exigeneies of navigation?

2d. The right of Pennsylvania to bridge the Allegheny and Monongahela, stands on quite other ground from the right of Virginia to bridge the Ohio. One eonelusive differenee has been mentioned, viz: That Virginia, by express eompaet, in 1789, agreed that the use and navigation of the river Ohio, through her territory, should be free and eommon to the eitizens of the United States. (*Rev. co.* 1819, *page* 59.)

3d. Were the eases exactly the same, and were all the bridges to stand or fall together, what is the privilege of erossing the Allegheny and Monongahela by bridge, instead of a ferry, eompared with the navigation up and down the Ohio? With Wheeling, as head of navigation, in high as well as low water, large boats exeluded from Pittsburg at all stages—ship building eut off—exclusive sovreignty and dominion over the river yielded to Virginia and the bordering States, for them to regulate and control navigation at will. Who would eonsider sueh results eompensated by Virginia's eonsent to bridge the Allegheny and Monongahela? or who would barter the free navigation of the Ohio river for any partieular mode of erossing those streams?

4th. Supposing an arrangement, as proposed by Mr. Stuart, to be made, and the suit against the Wheeling bridge eompany abandoned, what seeurity is thereby gained for the bridges and aqueduets on the Allegheny and Monongahela? Can the Wheeling bridge eompany, or even the State of Virginia, warrant and defend them? They are equally assailable, whether the Wheeling bridge stands or falls. In any event they must

rest upon the *right* of Pennsylvania, not the permission of Virginia, to erect them. That right can neither be strengthened nor weakened by any thing done in or by Virginia. If the right be questionable, citizens of any State, as well as Virginia, may question it. No one but themselves would be bound by any stipulation the defendants could make. In no possible event, therefore, can any benefit ensue to the Allegheny and Monongahela bridges by any arrangement with the Wheeling bridge company.

The continuance of the Wheeling bridge cannot benefit the trade of the Hempfield road, the Pennsylvania railroad, or the citizens of Philadelphia, because;

I. The routes of railroad laid down on Mr. Ellet's map as centering at Wheeling, do not exist, and their construction is a matter of great uncertainty, and of remote future contingency.

II. If they ever be constructed, then, as Wheeling is on this side of the river, the Hempfield road will obtain the same amount of trade from those roads, whether the bridge be in existence or not.

III. The question is not between the present bridge at Wheeling and *no bridge;* but between the present bridge and a *proper bridge;* and therefore, if the railroads expected to centre at Wheeling, will contribute so much trafic, that trafic will pay for the erection of a proper bridge.

IV. The bridge, if allowed to stand, will render Wheeling the depot for the river commerce of the Ohio, instead of Pittsburg; of that commerce a large proportion would then pass over the Baltimore and Ohio railroad, whereas it must all pass over the State works, and Pennsylvania road, if the navigation be unobstructed to Pittsburg.

V. If Pennsylvania allow the present bridge to stand, it would then justify the erection of a similar one at Parkersburg; and then *all* the river trade would pass over the Baltimore and Ohio branch road at that place, and both the Pennsylvania railroad and the Hempfield road would lose it.

VI. That as the river exports, from Cincinnati to Pittsburg, amount, at the present time, to over $40,000,000 annually, and that, as there are about 20,000 miles of river coast accessible by boats from Pittsburg, that commerce should not be jeopardized, unless upon the most urgent necessity, and in exchange for *certain*, *present*, and *equal* commercial advantages.

VII. Admitting that the supposed roads of Mr. Ellet were constructed, there would, even then, be no necessity for any sacrifice of the river commerce through Pittsburg to secure the railroad commerce through Wheeling; because the elevation of the bridge sought for in this suit, will permit the former to remain, while it will give every alleged advantage to the latter.

N. B.—It is, moreover, to be borne in mind, that the present bridge is not, and cannot be, adapted to railroad purposes at all. See ante page 8.